

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

| | | |
|-----------------------------------|---|------------------|
| In the matter of the complaint of |) | |
| MAX GARZA against |) | Case No. U-18182 |
| DTE ELECTRIC COMPANY. |) | |
| _____ |) | |

At the April 13, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On September 28, 2016, Max Garza filed a complaint against DTE Electric Company (DTE Electric), alleging that DTE Electric improperly billed him over several years for electric service at one of his rental properties. DTE Electric filed an answer on November 29, 2016, denying complainant's allegations.

An evidentiary hearing was held on December 6, 2016, before Administrative Law Judge Mark E. Cummins (ALJ). Complainant, DTE Electric, and the Commission Staff (Staff) participated in the hearing.

Mr. Garza is the owner and landlord of a rental property in Pontiac, Michigan (Shirley Street property), as well as other properties. According to Mr. Garza, under the contract he has with the Michigan State Housing Development Authority (MSHDA) for this property, the tenant was to be responsible for the electricity bill. 1 Tr 8. Mr. Garza stated he receives a consolidated bill for several properties and has automatic payment set up for his accounts with DTE Electric.

Mr. Garza did not realize until August 2016 that he had been paying the electric bill for the Shirley Street property since October 2010. 1 Tr 8-9. According to Mr. Garza, he attempted to work with DTE Electric to have the tenant made responsible for the duration of her residency at the property and subsequently filed a complaint with the Commission. 1 Tr 10. Mr. Garza requested that DTE Electric refund the money he paid, plus interest, for electric service at the Shirley Street property from October 2010 through September 2016 when the tenant became the account holder for the Shirley Street property. Mr. Garza alleged that DTE Electric also violated the rule regarding how often a bill can be estimated and that the company did not keep records as to why the company failed to obtain an actual meter read. 1 Tr 11. Mr. Garza also alleged that the company did not provide its rate information to him as required by Mich Admin Code, R 460.132(1). 1 Tr 12.

DTE Electric presented the testimony of Robin Jennings and one exhibit. Ms. Jennings, an Executive Consumer Affairs Center Consultant for DTE Electric, testified that according to DTE Electric's records, Mr. Garza requested service for the Shirley Street property on September 15, 2010. 1 Tr 19. The end date for service in Mr. Garza's name for that property was July 15, 2016. *Id.* According to Ms. Jennings, the records indicated that every reading during that time period was an actual reading from an AMI meter. 1 Tr 20, Exhibit R-1, pp. 6-15. The records also indicated that on September 17, 2013, and November 18, 2013, the service was shut off for non-payment and a DTE Electric employee recorded the meter reading at the Shirley Street property on those dates before service was shut off. 1 Tr 20. Ms. Jennings testified that DTE Electric records also indicated that several times during this time period, Mr. Garza contacted the company regarding the electric service or problems with the electric service at the Shirley Street property and that Mr. Garza made payments on the account to restore service at the Shirley Street property. 1 Tr 22-25. Ms. Jennings also pointed to notes from DTE Electric's customer service system on

pages 49-53 of Exhibit R-1 as further indication that Mr. Garza did not begin his inquiries about changing the name on the account until September 2016. 1 Tr 26-28. Ms. Jennings added that pages 58-89 of Exhibit R-1 are copies of the bills sent to Mr. Garza at his residence that include billing for the Shirley Street property. 1 Tr 29-30. Ms. Jennings explained these bills appear different from the billing statements sent to Mr. Garza because DTE Electric's billing system only allows employees to go back six months to print actual bills. The bills that Mr. Garza submitted as Exhibit C-1 include reprints of bills from billing periods beyond the six-month period prior to the request for the bills. 1 Tr 30.

On cross-examination, Ms. Jennings clarified that Mr. Garza's consolidated billing statements included different meter numbers associated with the different properties included in the statements. 1 Tr 31, 37. Ms. Jennings verified that an AMI meter was installed at the Shirley Street property on November 8, 2010, and that the AMI meter provided actual readings for that property since the installation date. 1 Tr 34-35. She also clarified that the reprinted bills will not appear exactly the same as the actual bills, but will contain the amount billed each month, the meter reading, and whether the meter read was an actual or an estimated read. 1 Tr 42.

On January 9, 2017, DTE Electric, Mr. Garza, and the Staff filed initial briefs, and on January 18, 2017, DTE Electric filed a reply brief. On January 19, 2017, the Staff submitted a letter to the docket that stated it would not be filing a reply brief.

The ALJ issued a Proposal for Decision (PFD) on January 27, 2017. In his PFD, the ALJ identified three issues that need to be resolved in this case. The first is whether DTE Electric overcharged Mr. Garza by including the cost of electric service for the Shirley Street property in his consolidated monthly billings and in his automatic payment plan. Mr. Garza alleged that by doing so, DTE Electric violated the billing rules and he was entitled to a refund of the overcharge

plus interest, as outlined in Mich Admin Code, R 460.126(1). Relying on the testimony and evidence provided by the company, the ALJ found that Mr. Garza was not overcharged for service provided to the Shirley Street property and recommended that the Commission instruct DTE Electric to provide Mr. Garza a refund or a bill credit in the amount of \$312.60, plus applicable interest, for the time period that Mr. Garza paid for electric service that was retroactively placed in the Shirley Street property tenant's name, specifically July 15, 2016, through September 20, 2016. PFD, p. 11.

The ALJ next addressed Mr. Garza's allegation that DTE Electric violated Mich Admin Code, R 460.132(1) by not providing him with a yearly explanation of all rates for which he may be eligible, a notice that complete rate schedules are available upon request, or a notice regarding the availability of assistance in determining the most appropriate rate should a customer be eligible to receive service under more than one rate. The ALJ found nothing in the record, other than Mr. Garza's allegation in his complaint, to indicate that DTE Electric violated this rule. PFD, p. 11. The ALJ pointed to Ms. Jennings' testimony on pages 30-31 of the transcript that the information required by the rule is generally included as an insert with customers' monthly bills and the fact Mr. Garza did not provide evidence to the contrary as the basis for finding that Mr. Garza did not support his allegation on this issue. The ALJ recommended that the Commission deny the portion of Mr. Garza's complaint regarding this issue. PFD, p. 12.

The last issue the ALJ addressed is whether DTE Electric violated Mich Admin Code, R 460.113(1), the Commission's rule regarding how often the company must obtain an actual meter read for billing purposes. Mr. Garza argued that the reprints of billing statements DTE Electric provided to him fail to show whether DTE Electric performed actual meter readings or whether the bill was based on an estimated reading. The ALJ found that Mr. Garza's evidence

does not prove that DTE Electric made excessive estimated readings. He also found that the evidence in this case shows that DTE Electric performed actual reads on the meter in September, October, and November 2010, and from December 2010 forward, actual readings were delivered to the company via advanced metering infrastructure (AMI) at the Shirley Street property. PFD, p. 12. The ALJ found that Mr. Garza did not sustain his burden of proof on this issue and recommended that the Commission reject Mr. Garza's allegations pertaining to excessive estimated meter readings.

In conclusion, the ALJ found that DTE Electric did not violate any of the Commission billing rules that Mr. Garza alleged were violated. The ALJ recommended that the Commission dismiss Mr. Garza's complaint in its entirety and that the Commission order DTE Electric, if it has not already done so, to immediately issue either a refund or a bill credit of \$312.60, plus interest, to Mr. Garza for the amount he paid for electric service to the Shirley Street property that was then retroactively billed to the tenant.

The ALJ provided the parties an opportunity to file exceptions to the PFD by February 17, 2017, and replies, if necessary, on February 27, 2017. No party filed exceptions.

Discussion

Rule 446 of the Michigan Administrative Hearing System, R 792.10446, which governs the handling of formal complaints pending before the Commission, provides that a "complainant generally has the burden of proof as to matters constituting the basis for the complaint." The ALJ concluded that Mr. Garza's evidentiary presentation failed to meet that burden, and recommended that his complaint be dismissed. By failing to file timely exceptions to the PFD, Mr. Garza has effectively abandoned his final opportunity to attempt to persuade the Commission that the PFD

was wrongly decided. However, even under such circumstances, the Commission nevertheless still must review the record for possible error.

Based on its review of the record, the Commission concludes that the ALJ's findings and recommendations were well reasoned and supported by the evidence. Therefore, the Commission adopts the findings and conclusions of the ALJ.

THEREFORE, IT IS ORDERED that the complaint of Max Garza against DTE Electric Company is dismissed with prejudice and DTE Electric Company is ordered to immediately refund or provide a bill credit to Max Garza in the amount of \$312.60, if it has not already done so.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order under MCL 462.26. To notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of April 13, 2017.

Kavita Kale, Executive Secretary